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09/874,057	06/06/2001	Takehiro Nishiyama	209396US-2X	5638

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3689

NOTIFICATION DATE	DELIVERY MODE
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12/26/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 09/874,057	Applicant(s) NISHIYAMA, TAKEHIRO	
	Examiner Dennis Ruhl	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/14/08 has been entered.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 17-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For claim 17, the examiner notes that the claim is directed to an apparatus and not a method. The examiner notes that applicant has recited "the second network terminal displaying information on the display screen in the form of a calendar...". This is a positive recitation to a step of using the recited structure of an apparatus claim, which is a mixing of two distinct statutory classes of invention. This renders the claim non-statutory. Applicant cannot claim method steps in an apparatus type of claim.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 17, one wishing to avoid infringement would not know if the method step of “displaying information on the display screen” was required to infringe the claim. Is just the structure recited in claims 17-21 needed for infringement or is the structure and an execution of the recited method step required for infringement? This is not clear and renders the claim indefinite.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 17-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Janssen (5754850).

For claims 17,18,20,21,22, Janssen discloses a system and method that relates to *“the field of computer search methods. More particularly the present invention relates to a method and apparatus for searching a database for items satisfying specific features or closely satisfying specific features.”* (See the Field of the Invention section of Janssen). Janssen also discloses in column 8, lines 48-54, that the method is contemplated as being performed “on-line” and can be used for purposes other than real estate such as finding a lawyer, finding a loan, or finding an apartment. The examiner takes official notice that apartments are an item that is well known as being rented. Janssen recognizes the use of the system and method for apartments, which are rentals. Janssen discloses that the information about available items (items for sale or rent or services available for hire, or whatever the intended use of the system is) is downloaded to a computer by using a modem 270. See figure 2 and column 4, lines 10-11. This inherently requires the use of a first terminal as claimed and satisfies the functional language relating to the 1st terminal. One must necessarily have a first terminal that communicates with modem 270 to update the information on file. The 2nd terminal is also considered inherent because Janssen discloses that the invention can be done “on-line”. This requires that the customer desiring a rental has a 2nd terminal that they use to submit the search query describing what they want as far as a rental goes (or whatever the system is being used for and whatever you are searching for). This 2nd terminal inherently has a display screen that allows the user to see entered

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data and to see the results of the search queries. The network server is 200 and the means for holding data is database 210. The database 210 holds data relating to whatever the system is being used for. This includes data such as specification (kind of apartment, 1 bedroom, 2 bedroom, etc.); location; and time period (when is apartment needed or how long of a lease is desired?). This kind of information necessarily is involved in the rental process for apartments. If apartments are listed the data will include the kind of apartment, location, and availability. The “means for searching” is the software disclosed in column 4, lines 2-4. The server being configured to provide a searched result is present in Janssen because it is disclosed that the results are given to the customer (the server provides results). After all that is the reason you are using the system anyway, to get results to your search. With respect to the ability of the server to provide information in the form of a calendar, this is still just a recitation to an ability to provide a particular type of data, where the data itself (calendar format) is directed to non-functional descriptive material. The server of Janssen can provide data in the form of search results to the 2nd terminal, which satisfies what is claimed. The kind of data being claimed (i.e. whether the item is rented, under course of negotiations, etc.) and how it is presented (calendar format) is not actually being positively recited in the claim because it is directed to the intended use of the system and is just describing the kind of data that the server is configured “to provide”. In other words, the kind of data claimed is just the data that is able to be sent to the 2nd terminal by the recited “server”. The fact that the result is in the form of a calendar does not matter and is directed to non-functional descriptive material. However, the result in Janssen for the

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example of an apartment would include whether or not the apartment is rented or vacant. The examiner further notes that the data related to the search result is directly dependent on the kind of data you are searching (what are you looking for, a lawyer, an apartment, a loan, etc.) and would naturally flow from the intended use of the system. In Janssen it is disclosed that the user can specify certain search criteria as being primary and others as non-primary. This satisfies the claimed limitation of having an option that allows the identification of a preferred option for one of the search criteria. Janssen discloses this feature. Janssen searches for the primary features first and will then search the results for the non-preferred options. With respect to the fact that the claims are reciting that the system is for the renting of a construction machine and the kind of data the search result is intended to produce, this is directed to the intended use of the system and must result in a structural difference when compared to the prior art. In this case there is no difference between the prior art. The fact that the data for location, specification and time period are intended for or describe construction machines does not define over the same kind of data that would be used for apartments. The data involved in construction machines and apartments is the same, namely, location, specification (kind of apartment), and time period. The fact that the data is relating to construction machines is not important because the data variables themselves are disclosed in Janssen and are dependent on the intended use of the system. If you are looking for a loan, the result of the search request would include data relevant to loans. If you are looking for a lawyer, the result of the search would include data relevant to lawyers. Additionally, the language describing that the 2nd terminal is

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“configured to enable” the inputting of certain information (search criteria) is very broad and is really just claiming that the terminal is capable of allowing input of data and this is not claiming the data as being stored in a positive sense. Any computer with an input device such as a keyboard is capable of inputting any kind of information you desire.

With respect to the limitations directed to the data that is able to be inputted into the system and searched by the system, the examiner has two comments. The first is that the language “configured to enable” only means that the terminals must be capable of allowing one to enter data. This does not mean or require the claimed type of data. The data is just the intended use of the system. Second comment is that data is data, and claiming that certain data that represents construction machines is being searched or is able to be inputted is not defining anything further to the system in a structural sense.

In the alternative, under section 103, if one decided that Janssen did not disclose the same structure that the claimed limitation of *“the server being configured to provide the second network terminal with the information related to the construction machine for rent as a calendar”* covers, and one interpreted this language to require Janssen to disclose a calendar format for a search result to be a proper rejection, the examiner offers the following comments. The use of calendars to display data relating to rental items is old and well known. Rental agencies that rent out homes have for a long time used calendars to show when certain homes are rented, vacant, or just not available. A calendar is a very useful format for displaying information when the issue of time and dates is involved. One of ordinary skill in the art at the time the invention

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was made would have found it obvious to display the search result by using a calendar format, because this format is well known to be very useful to display information when dates and time are involved, such as the dates when something is available or not available. A calendar is a very well known tool that allows one to display information and relate that information to dates and time. One of ordinary skill in the art would have recognized this and this is something that is within the knowledge that one of ordinary skill in the art would possess. The examiner also notes that the issue of the use of a calendar for the search results was set forth as being obvious in the very first office action in this case with respect to original claim 11, and applicant failed to provide any rebuttal to this issue as was required by 37 CFR 1.111 if applicant disagreed with the position of the examiner. The examiner also notes that the Board of Patent Appeals and Interferences decided this very issue in their decision of 8/12/08. The rejection made under 35 USC 103 addressing the obviousness of providing the results in the form of a calendar was Affirmed by the Board of Patent Appeals and Interferences.

For claim 19, reciting what the machine is that is for rent defines nothing further to the claimed system. The kind of machine is directly related to the intended use of the system and what the item is that is being rented. Janssen satisfies what is claimed because this claim defines nothing further to the system of claim 17.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen (5754850) in view of the newswire article of 2-3-2000 "United Rentals, Inc. Launches Business to Business Equipment E-Rental Store". In this rejection the examiner is giving much more weight to the intended use of the system than in the 102 rejections to more fully address the actual intended use recited. The examiner also has addressed the issue of the use of a calendar in two manner, one where Janssen satisfied this limitation and one were it is addressed via section 103.

For claims 17,21,22, Janssen discloses a system and method that relates to "*the field of computer search methods. More particularly the present invention relates to a method and apparatus for searching a database for items satisfying specific features or closely satisfying specific features.*" (See the Field of the Invention section of Janssen). Janssen also discloses in column 8, lines 48-54, that the method is contemplated as being performed "on-line" and can be used for purposes other than real estate such as finding a lawyer, finding a loan, or finding an apartment. The examiner takes notice that apartments are an item that is well known as being rented. Janssen recognizes the use of the system and method for apartments, which are rentals. Janssen discloses that the information about available items (items for sale or rent or services available for hire, whatever the intended use of the system is) is downloaded to a computer by using a modem 270. See figure 2 and column 4, lines 10-11. This inherently requires the use of a first terminal as claimed and satisfies the functional language relating to the 1st

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terminal. One must necessarily have a first terminal that communicates with modem 270 to update the information on file. The 2nd terminal is also considered inherent because Janssen discloses that the invention can be done “on-line”. This requires that the customer desiring a rental has a 2nd terminal that they use to submit the search query describing what they want as far as a rental goes. This 2nd terminal inherently has a display screen that allows the user to see entered data and to see the results of the search queries. The network server is 200 and the means for holding data is database 210. The database 210 holds data relating to whatever the system is being used for. This includes data such as specification (kind of apartment, 1 bedroom, 2 bedroom, etc.); location; and time period (when is apartment needed or how long of a lease is desired?). This kind of information necessarily is involved in the rental process for apartments. If apartments are listed the data will include the kind of apartment, location, and availability. The “means for searching” is the software disclosed in column 4, lines 2-4. The means for providing a searched result is present in Janssen because it is disclosed that the results are given to the customer. After all that is the reason you are using the system anyway, to get results to your search. The server being configured to provide a searched result is present in Janssen because it is disclosed that the results are given to the customer (the server provides results). With respect to the ability of the server to provide information in the form of a calendar, this is still just a recitation to an ability to provide a particular type of data, where the data itself (calendar format) is directed to non-functional descriptive material. The server of Janssen can provide data in the form of search results to the 2nd terminal, which satisfies what is

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claimed. The kind of data being claimed (i.e. whether the item is rented, under course of negotiations, etc.) and how it is presented (calendar format) is not actually being positively recited in the claim because it is directed to the intended use of the system and is just describing the kind of data that the server is configured "to provide". In other words, the kind of data claimed is just the data that is able to be sent to the 2nd terminal by the recited "server". The fact that the result is in the form of a calendar does not matter and is directed to non-functional descriptive material. However, the result in Janssen for the example of an apartment would include whether or not the apartment is rented or vacant. The examiner further notes that the data related to the search result is directly dependent on the kind of data you are searching (what are you looking for, a lawyer, an apartment, a loan, etc.) and would naturally flow from the intended use of the system. In Janssen it is disclosed that the user can specify certain search criteria as being primary and others as non-primary. This satisfies the claimed limitation of having an option that allows the identification of a preferred option for one of the search criteria. Janssen discloses this feature. Janssen searches for the primary features first and will then search the results for the non-preferred options. Additionally, for claim 17, the language describing that the 2nd terminal is "configured to enable" the inputting of certain information (search criteria) is very broad and is really just claiming that the terminal is capable of allowing input of data and this is not claiming the data as being stored in a positive sense. Any computer with an input device such as a keyboard is capable of inputting any kind of information you desire.

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Not disclosed in Janssen is that the system and method is used renting of construction machines.

The newswire article discloses that United Rentals has opened on "on-line" E rental store for renting of equipment such as construction equipment, heavy machinery, and other types of equipment. Because Janssen discloses that the system and method can be used for things such as searches for "*home loans, schools, doctors, cars, apartments, vacation packages, lawyers, and CPA's*" and the system can also be used "on-line", it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Janssen for the rentals of equipment such as construction equipment and machines, as the newswire article discloses. The system of Janssen can be used for any kind of activity where searching for something is involved. One of ordinary skill in the art would find the use of Janssen obvious for construction machines in view of the fact that United Rentals is renting equipment "on-line". The recited intended use of the system is a choice that is obvious to one of ordinary skill in the art. With respect to the search result, when one of ordinary skill in the art is using the methodology and system of Janssen with construction machine rentals, one of ordinary skill in the art would appreciate or understand that the results would contain data such as whether or not the available (rented or vacant or out of service at the present time, etc.) The examiner feels that the claimed data would naturally flow from the fact that the intended use of the system is for the rental of construction machines.

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For claim 18, Janssen discloses upper location information which is the entered zip code. This defines an area or a location. The lower location information is a location such as “near the ocean” or “walking distance to public transportation”. These are both locations within the more broad location defined by the zip code. In Janssen the zip code is a preferred search term (primary) and the features such as being near the ocean or near public transportation are disclosed as being non-preferred search criteria. Janssen searches as has been claimed.

With respect to claim 19, the recitation that the machine is a tracklaying machine is defining nothing further to the system and is satisfied by Janssen. The construction machine is what is being rented and is not part of the system. At best, this limitation is non-functional descriptive material that just describes what the item is that is being rented. Additionally, when one is using the system of Janssen for the rental of construction equipment as the 103 rejection does, one of ordinary skill in the art would appreciate that this includes machines such as a tracklaying machines.

For claim 20, Janssen discloses what is claimed because the information about what is available (specification information) can be searched as claimed. The user can specify that they are looking for an apartment (upper class), and then further specify that they want a two-bedroom apartment (lower class). This is information in hierarchal form. This satisfies what is claimed. The language about the data defining something that is easy to change or not easy to change is just descriptive about the data itself and gets minimal weight.

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With respect to the use of a calendar, in the alternative, under section 103, if one decided that Janssen did not disclose the same structure that the claimed “means for providing the second terminal with the information related to the construction machine for rent as a calendar” covers, and one interpreted this language to require Janssen to disclose a calendar format for a search result to be a proper rejection, the examiner offers the following comments. The use of calendars to display data relating to rental items is old and well known. Rental agencies that rent out homes have for a long time used calendars to show when certain homes are rented, vacant, or just not available. A calendar is a very useful format for displaying information when the issue of time and dates is involved. One of ordinary skill in the art at the time the invention was made would have found it obvious to display the search result by using a calendar format, because this format is well known to be very useful to display information when dates and time are involved, such as the dates when something is available or not available. A calendar is a very well known tool that allows one to display information and relate that information to dates and time. One of ordinary skill in the art would have recognized this and this is something that is within the knowledge that one of ordinary skill in the art would possess. The examiner also notes that the issue of the use of a calendar for the search results was set forth as being obvious in the very first office action in this case with respect to original claim 11, and applicant failed to provide any rebuttal to this issue as was required by 37 CFR 1.111 if applicant disagreed with the position of the examiner. The examiner also notes that the Board of Patent Appeals and Interferences decided this very issue in their decision of 8/12/08. The rejection

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made under 35 USC 103 addressing the obviousness of providing the results in the form of a calendar was Affirmed by the Board of Patent Appeals and Interferences.

11. Applicant's arguments filed 10/14/08 have been fully considered but they are not persuasive.

Applicant has argued that the prior art does not disclose that the server is configured to provide the second network terminal with information in the form of a calendar as well as other recited information relating to the rental, where the display is displaying information (in an apparatus claim). Applicant argues that Janssen is not directed to construction machines but is directed to real estate, schools, doctors, apartments, lawyers, CPAs, etc..

On page 7, applicant specifically argued that the prior art does not disclose the step of displaying information on the screen in the form of a calendar. This has already been addressed by the examiner and Affirmed by the Board of Patent Appeals and Interferences. Also, in apparatus claims there are not steps occurring so arguing a method step for novelty of an apparatus claim is not persuasive. The examiner maintains the position that the calendar format is directed to non-functional descriptive material and interprets the claims to be reciting the ability of the server to provide information. What the information is that is being provided is directed to non-functional descriptive material, as has been Affirmed by the Board in the 35 USC 102 rejection of record.

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With respect to the allegation that the “official notice” is not proper, applicant addresses the obviousness statement from the examiner by again stating “*the Office Action merely asserts that the use of calendars to display data relating to rental items is old and well-known. No evidence to that effect is offered. To the extent that the Examiner is using Official Notice, this assertion is respectfully traversed.*” Applicant has again not set forth any basis for a traversal. Applicant apparently intends to continue traversing the rejection without pointing out or explaining why the rejection and the taking of official notice is not proper. The only argument made is that because Janssen is not concerned with time dependent searching one would not use a calendar. Applicant has never even actually stated that they disagree with the examiner in that the use of calendars to display information concerning rental items is well known to one of ordinary skill in the art. To date applicant has never for the record stated that this is not well known. Applicant’s traversal is taken as nothing more than another general allegation of patentability because no explanation has been provided to the examiner explaining why the rejection is not proper. While not a reason to find a traversal non-persuasive (because the entire record must be considered when considering an Appeal Brief and the arguments therein), the examiner also notes that the issue of the use of a calendar for the search results was set forth as being obvious in the very first office action in this application with respect to original claim 11, and applicant failed to provide any kind of rebuttal to this issue as was required by 37 CFR 1.111. Because 37 CFR 1.111 requires applicant to point out “the supposed errors” in the office action, and because applicant failed to traverse this limitation and the obviousness rejection from

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the examiner on more than one occasion, the examiner concluded that the rejection was proper. The examiner stated that the use of a calendar was considered to be obvious in the office actions of 6/30/04, 1/31/05, and applicant never traversed the position of the examiner. The Board of Patent Appeals and Interferences addressed this very issue upon Appeal and agreed with the examiner that this feature is obvious. The decision of 8/12/08 on page 15 states:

“The Examiner found that, were the calendar format to be found to result from a structural limitation and accorded patentable weight, such a format would have been known due to its notoriety. The Examiner concluded that in a rental environment, the nature of rental being time dependent would have suggested a calendar format to one of ordinary skill. The Appellant again contended that Janssen did not show a calendar format and did not show the status information in claim 17 (Appeal Br. 7).

*We disagree with the Appellant. First, we found that claim 17 was anticipated by Janssen supra, and anticipation is the epitome of obviousness, Structural Rubber Products Co. v Park Rubber Co., 749 F.2d 707, 716 (Fed. Cir. 1984). **Second, the Appellant did not traverse the Examiner's finding as the notoriety of calendar formats and the knowledge of such formats by those of ordinary skill. Given the time dependent nature of rental, use of a calendar format was predictable to one of ordinary skill.** “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” KSR, 127 S. Ct. at 1739. Third, status information is not part of the apparatus structure, and is therefore not accorded patentable weight.”*

The examiner has been Affirmed on this issue. The issue of whether or not a calendar format is obvious is moot as this is a matter of fact for the record due to applicants' failure to properly and timely traverse the taking of official notice. The Board of Patent Appeals and Interferences already considered this very issue and they decided that it was in fact obvious and Affirmed the rejection from the examiner. Applicant is arguing things that have already been decided and the arguments are still not persuasive.

12. This is an RCE of applicant's earlier Application No. 09/874057. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689